

Message

**From:** Wade, Alexis [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5C9FBA2EF8444572A39185242B70593B-WADE, ALEXIS]  
**Sent:** 11/22/2019 11:13:40 PM  
**To:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**CC:** Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]  
**Subject:** RE: FL assumption and programmatic consultations

Thank you! You're welcome!

Alexis Wade  
Attorney-Adviser  
Water Law Office  
EPA Office of General Counsel  
(202) 564-3273

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Friday, November 22, 2019 6:10 PM  
**To:** Wade, Alexis <Wade.Alexis@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Subject:** Re: FL assumption and programmatic consultations

Great note. Very helpful. Thanks.  
Sent from my iPhone

Steven Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
202-564-5488

On Nov 22, 2019, at 5:15 PM, Wade, Alexis <Wade.Alexis@epa.gov> wrote:

Hello Matt and David,

## Ex. 5 AC/DP

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In their regulations, programmatic consultations are either 1) consultations on “multiple similar, frequently occurring, or routine actions expected to be implemented in particular geographic areas” or 2) “a proposed program plan, policy, or regulation providing a framework for future proposed actions.”

50 CFR 402.02 defines framework programmatic actions: “Framework programmatic action means, for purposes of an incidental take statement, a Federal action that

approves a framework for the development of future action(s) that are authorized, funded, or carried out at a later time, and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation.”

The regulations specify that an ITS is not required for framework programmatic actions.

50 CFR 402.14(i)(6): For a framework programmatic action, an incidental take statement is not required at the programmatic level; any incidental take resulting from any action subsequently authorized, funded, or carried out under the program will be addressed in subsequent section 7 consultation, as appropriate. For a mixed programmatic action, an incidental take statement is required at the programmatic level only for those program actions that are reasonably certain to cause take and are not subject to further section 7 consultation.

## **Ex. 5 AC/DP**

The preamble to these regulations states “for other types of programmatic actions not falling within the definitions provided in the rule, incidental take statements will be formulated by the Services to accompany biological opinions where incidental take is reasonably certain to occur and the proposed Federal action is compliant with the requirements of section 7(a)(2).”

## **Ex. 5 AC/DP**

Let me know if you have any questions.

Alexis

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